Public Document No. 86

SECOND ANNUAL REPORT

OF THE

BOARD OF COMMISSIONERS

FOR THE

PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES.

DECEMBER 31, 1910.

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The Commonwealth of Massachusetts.

REPORT OF THE BOARD OF COMMISSIONERS

FOR THE

PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES.

To His Excellency the Governor and the Honorable Council of the Commonwealth of Massachusetts.

The undersigned commissioners, Samuel Ross, Samuel Williston and Hollis R. Bailey, appointed by the Governor under the provisions of chapter 416 of the Acts of 1909, pursuant to the provisions of said act submit the following report.

Jan. 6, 1910, the chairman of the commission, Dean James Barr Ames, died, and the vacancy thus created was filled by the Governor by the appointment of Prof. Samuel Williston.

In January, 1910, the Board prepared and caused to be introduced three petitions with accompanying bills, as follows: —

1. A petition asking for the enactment of the uniform bill of lading act.

2. A petition asking for the enactment of the uniform stock transfer act.

3. A petition asking for an act authorizing the Board, in its discretion, to contribute the sum of $100 per year toward the expenses of the Conference of Commissioners on Uniform State Laws, the same to come out of the money appropriated for the expenses of the Board.

The first two petitions were referred to the committee on mercantile affairs. Members of this commission attended hearings of the committee and furnished information desired

by the committee, including information as to the nature of the body known as the Conference of Commissioners on Uniform State Laws, and the character and extent of its work. It was shown that the two uniform laws above mentioned had been carefully considered for more than two years by the Conference of Commissioners, and after full discussion had, at the session held in August, 1909, been recommended for adoption by the different States.

All of the three bills introduced as aforesaid were passed without amendment.

The uniform bill of lading act so enacted is chapter 214 of the Acts of 1910.

The uniform stock transfer act so enacted is chapter 171 of the Acts of 1910.

Conference of National Civic Federation.

Two members of this Board, viz., Samuel Ross and Hollis R. Bailey, attended the Conference on Uniform Legislation held in Washington, D. C., in January, 1910, under a call issued by the National Civic Federation.

Mr. Bailey, as chairman of the special committee appointed by the Conference of Commissioners on Uniform State Laws to frame a uniform child labor law, was given a place upon the program, and delivered a short address on the subject of a uniform child labor law.

The conference in Washington lasted three days, and addresses were delivered by President Taft, Secretary Root, Hon. Alton B. Parker, Samuel Gompers, John Mitchell, Gifford Pinchot and others. Several of the uniform laws recommended by the Conference of Commissioners on Uniform State Laws were considered by a committee presided over by the Hon. Seth Low, and were endorsed by the committee and afterwards by the conference in Washington as a whole. The doings at this conference have been published, and a copy will be found in our State Library.

Uniform Child Labor Law.

The special committee appointed by the Conference of Commissioners on Uniform State Laws to draft a uniform child labor law has done a good deal of work and has made considerable progress during the year.

The chairman of this special committee is Hollis R. Bailey, a member of this Board. The other members are Amasa M. Eaton of Rhode Island (Secretary), Fremont Wood of Idaho, Nathan W. MacChesney of Illinois, and A. T. Stovall of Mississippi. Public meetings were held in Washington on the matter of a child labor law in January. In April and May a large number of printed circulars were sent out by the committee, with a draft of a proposed law, and suggestions were invited. Finally, in July a report of the committee was prepared, with a draft of a uniform child labor law. Copies were sent to all the commissioners appointed in the different States to promote uniformity of legislation, and also to all members of American Bar Association.

This report was presented to the conference of commissioners at its annual meeting in Chattanooga in August, and was explained briefly. No action was taken, and the matter will come up in due course for discussion and action at the next annual conference, which will probably be held in Boston in August, 1911.

A copy of said report is annexed hereto.

Uniform Workmen's Compensation Act.

The question of workmen's compensation for injuries sustained in the course of their employment has been under consideration in Europe for nearly twenty years, and acts have been passed in Germany, France, Norway and England providing for the relief of injured workmen and of persons who are dependent upon them. In most of said countries such relief has been furnished by means of some sort of accident insurance. In England a workmen's compensation act was passed in 1897, which was confined to workmen in a limited number of the more hazardous occupations. In 1906 the law was somewhat altered and was extended to practically all workmen.

A federal compensation act of a somewhat limited character was passed by Congress May 30, 1908, applying only to government employees.

In New York, June 25, 1910, a workmen's compensation act was passed, and took effect Sept. 1, 1910.

In June, 1910, by chapter 120 of the Resolves of 1910,

the Legislature of Massachusetts provided for a commission to investigate the subject and prepare a bill to be submitted to the Legislature in 1911.

Similar commissions have been created in Minnesota, New Jersey, Wisconsin, Ohio and Illinois.

The National Civic Federation gave some time to the question at the meeting in Washington, and appointed a committee to prepare a draft of an act.

It being conceded on all hands that it is very desirable that any legislation upon the matter of workmen's compensation for injuries should, as far as possible, be uniform throughout the States, the Conference of Commissioners on Uniform State Laws, at the meeting in August, 1910, created a special committee to draft a uniform workmen's compensation law.

Special Committee on a Uniform Workmen's Compensation Act.

The committee consists of the following members: — Charles Thaddeus Terry of New York, John R. Hardin of New Jersey, George Whitelock of Maryland, John H. Wigmore of Illinois, Aldis B. Browne of District of Columbia, Peter W. Meldrim of Georgia and Hollis R. Bailey of Massachusetts.

Hollis R. Bailey of this Board has been elected chairman, and Charles Thaddeus Terry has been elected secretary.

A meeting of the committee was held at Philadelphia, Oct. 22, 1910.

Three members of the committee, viz., Messrs. Bailey, Browne and Wigmore, attended a conference held in Chicago in November. This conference was called by the Massachusetts commission created under the resolve above mentioned, and was attended by over twenty of the commissioners appointed by the different States to frame workmen's compensation laws.

After a discussion lasting three days a subcommittee, consisting of H. V. Mercer of Minnesota, A. W. Sanborn of Wisconsin and John H. Wigmore of Illinois, was appointed to put in shape an act embodying the conclusions reached by the conference.

The special committee of the Conference of Commissioners on Uniform Laws was given full opportunity to make suggestions and participate in the discussion had by the commissioners appointed by this and other States.

Prof. Samuel Williston of this Board was asked to give opinions on the constitutional questions involved, and his opinions will be printed in the report of the proceedings at Chicago.

Conference of Commissioners on Uniform State Laws.

The conference held its twentieth annual meeting at Chattanooga, Tenn., in August, 1910.

The following officers were elected for 1910–1911 : —

President, Walter George Smith, 1006 Land Title Building, Philadelphia, Pa.
Vice-President, J. R. Thornton, Alexandria, La.
Secretary, Charles Thaddeus Terry, 100 Broadway, New York, N. Y.
Treasurer, Talcott H. Russell, 42 Church Street, New Haven, Conn.
Assistant Secretary, M. Grunthal, 100 Broadway, New York, N. Y.
Executive Committee, William H. Staake, Pennsylvania; Peter W. Meldrim, Georgia; James R. Caton, Virginia; C. P. Black, Michigan; Charles W. Smith, Kansas; and Amasa M. Eaton, Rhode Island, *Ex-President*.

The proceedings of the conference appear in a printed report, a copy of which is in our State Library. They will also appear in the report of the American Bar Association, soon to be published. Prof. Samuel Williston of this Board is a member of the committee on commercial law.

Two additional uniform laws were approved and recommended for adoption in the several States. One of these is entitled "An Act relative to wills executed without this State, and to promote uniformity among the States in that respect." The other is entitled "An Act relating to desertion and non-support of wife by husband, or of children by either father or mother, and providing punishment therefor; and to promote uniformity between the States in reference thereto."

In our recommendations at the end of this report we ask that these uniform laws may be adopted in Massachusetts,

and pursuant to chapter 452 of the acts of 1910 we annex to this report drafts of bills embodying the legislation recommended.

Expenditures of the Board.

The following is an account of the expenditures of this Board for the year: —

1909.		
Aug. 24.	Paid railroad fares, H. R. Bailey, Boston to Detroit, Mich., and return, including berths,	$40 00
Aug. 24.	Paid hotel expenses, H. R. Bailey, at Detroit, August 17 to 23, 1909, and meals, etc.,	35 00
Nov. 16.	Paid stamps,	1 00
Nov. 19.	Paid Francis B. James for 100 copies of "American Uniform Commercial Acts",	10 00
Dec. 30.	Paid Geo. W. Smith, additional for 100 copies of "American Uniform Commercial Acts",	2 00
1910.		
Jan. 16–20.	Paid expenses, H. R. Bailey, to Washington and return (less $6 paid by Enterprise Transportation Company),	44 00
Feb. 10.	Paid express and cartage on 100 copies of "American Uniform Commercial Acts",	1 07
Feb. 11.	Paid Talcott H. Russell, 20 additional copies,	2 40
Mar. 1.	Paid telegram,	40
Mar. 10.	Paid Wright & Potter Printing Co., 300 pamphlets,	5 03
Mar. 21.	Paid 200 envelopes to send report,	60
Mar. 21.	Paid 100 envelopes to send pamphlet,	95
Mar. 21.	Paid 200 one-cent stamps,	2 00
Mar. 28.	Paid express to New Bedford,	25
Mar. 30.	Paid stamps,	1 00
Apr. 5.	Paid printing slips,	1 50
Apr. 29.	Paid trip to Providence,	1 80
May 12.	Paid 100 one-cent stamps,	1 00
May 12.	Paid 800 one-cent stamps,	8 00
May 13.	Paid addressing envelopes *in re* child labor law,	1 75
May 13.	Paid telephone to Providence,	30
May 13.	Paid express on book (*in re* child labor),	30
May 16.	Paid 100 one-cent stamps,	1 00
May 19.	Paid 100 one-cent stamps,	1 00
May 26.	Paid Miss M. Casey, typewriting,	2 12
	Amount carried forward,	$164 47

	Amount brought forward, ...	$164 47
June 2.	Paid Miss M. MacAllister, copying, . . .	3 00
June 2.	Paid A. C. Getchell & Son, printing and envelopes, ...	65 60
July 9.	Paid Miss M. MacAllister, typewriting, . .	1 50
July 11–13.	Paid traveling expenses, H. R. Bailey, to New York and Providence, ...	19 14
Aug. 19.	Paid 2,600 one-cent stamps, ...	26 00
Aug. 19.	Paid 1,950 two-cent stamps, ...	39 00
Aug. 20.	Paid 500 two-cent stamps, ...	10 00
Aug. 20.	Paid telegram to New York, ...	29
Aug. 22.	Paid H. P. Mellen, clerical services, . . .	9 00
Sept. 2.	Paid express to and from Chattanooga on reports.	2 30
Sept. 10.	Paid Samuel Ward Company, envelopes, . .	9 13
Sept. 13.	Paid Alice Sampson, addressing envelopes, .	1 91
Sept. 13.	Paid expenses, H. R. Bailey, to Chattanooga to attend Conference of Commissioners: —	
	Railroad tickets and berths, ...	64 00
	Hotel bill, food and incidental expenses, August 22 to September 1, ten days, H. R. Bailey, .	60 00
Sept. 20.	Paid Eva M. Leslie, clerical services, . .	12 00
Sept. 20.	Paid Carolyn Veazey, typewriting, . . .	7 70
Sept. 20.	Paid Wright & Potter Printing Co., printing 4,900 reports, ...	100 46
Sept. 20.	Paid Wright & Potter Printing Co., printing slips,	2 80
Oct. 21–23.	Paid car fares, H. R. Bailey, to Philadelphia and return to attend meeting of special committee on uniform workmen's compensation act, ...	18 00
Oct. 21–23.	Paid Hotel Belmont in New York, H. R. Bailey,	3 00
Oct. 21–23.	Paid Hotel Bellevue-Stratford, Philadelphia, H. R. Bailey, ...	3 50
Oct. 21–23.	Paid meals on trains and at hotels, and other traveling expenses, H. R. Bailey, . .	11 50
Oct. 21–23.	Paid express to Providence, ...	20
Nov. 7.	Paid railroad ticket to Chicago, H. R. Bailey, .	21 95
Nov. 7.	Paid sleeping-car berth, H. R. Bailey, . .	6 00
Nov. 7–13.	Paid meals on trains and at hotel, and other traveling expenses, H. R. Railey, . .	17 00
Nov. 12.	Paid railroad ticket from Chicago, H. R. Bailey,	22 00
Nov. 12.	Paid sleeping-car berth, H. R. Bailey, . .	6 00
Nov. 12.	Paid Hotel La Salle, three days, H. R. Bailey. .	10 50
Nov. 29.	Paid H. V. Mercer, copies of pamphlets, . .	1 00
	Amount carried forward, ...	$718 95

	Amount brought forward, ...	$718 95
June 9.	Expenses of Samuel Ross to Washington, D. C., to attend Conference of Civic Federation, .	46 65
June 9.	Expenses of Samuel Williston to New Haven, Conn., to attend meeting of committee on commercial law, ...	12 00
Sept. 21.	Expenses of Samuel Williston to Chattanooga to attend conference, ...	144 05
	Total, ...	$921 65

Recommendations.

The Board makes the following recommendations: —

1. That no amendments to any of the so-called uniform acts be passed by the Legislature or approved by the Governor until the same have been referred to the Conference of Commissioners and approved by that body.

2. That the Legislature pass the act relative to wills executed without this State, a draft of which is annexed to this report.

3. That the Legislature pass the act relating to desertion and non-support of wife by husband or desertion and non-support of children by either father or mother, a draft of which is annexed to this report.

HOLLIS R. BAILEY.
SAMUEL ROSS.
SAMUEL WILLISTON.

APPENDIX.

APPENDIX.

REPORT OF THE SPECIAL COMMITTEE ON A UNIFORM CHILD LABOR LAW.

To the Commissioners on Uniform State Laws in Twentieth National Conference.

The Special Committee on a Uniform Child Labor Law respectfully reports as follows: —

The committee met in Detroit in August, 1909, and completed its organization by electing Hon. Amasa M. Eaton of Rhode Island as secretary. It was voted to hold meetings in Washington in January, 1910, in connection with the conference arranged for by the National Civic Federation.

In January, 1910, all of the committee except Mr. MacChesney, who was unavoidably detained, met in Washington, and had several meetings and public hearings. These hearings were well attended, several officers of the National Child Labor Committee and of the Southern Child Labor Committee being among those present.

The committee decided to use the so-called standard child labor law, prepared by the National Child Labor Committee, as its starting point, and voted that the chairman and secretary send out a considerable number of printed circulars containing interrogatories and accompanied by a copy of the so-called standard child labor law, for the purpose of obtaining suggestions and information.

The following is a copy of the circular aforesaid: —

CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

Special Committee on a Uniform Child Labor Law.

HOLLIS R. BAILEY of Cambridge, *Chairman.*
AMASA M. EATON of Providence, R. I., *Secretary.*
FREMONT WOOD of Idaho.
N. W. MACCHESNEY of Illinois.
A. T. STOVALL of Mississippi.

Questions concerning a Uniform Child Labor Law.

The above named special committee was appointed at the last conference of commissioners on uniform State laws, and was given the duty of preparing a uniform child labor law, to be submitted for consideration at the next conference, to be held in August, 1910, at Chattanooga.

The enclosed draft of an act was prepared for the National Child Labor Committee, and we understand is favored by that organization.

The special committee aforesaid has taken said draft as a good basis for it to work upon, and is very desirous of obtaining suggestions as to any additions or changes needed to make said act better or more effective, or nearer what a uniform child labor law should be.

The special committee has framed the following questions, which it hopes may be answered by all to whom they are sent. Answers must be received by June 1, 1910, and should be sent to the undersigned.

AMASA M. EATON, *Secretary*,
Providence, R. I.

Question 1.—What changes are needed in the enclosed act to make it suitable for adoption as a uniform child labor law?

Question 2.—What objections are there to the act in its present form?

Question 3.—What serious omissions, if any, are there in the act as framed?

Question 4.—What further provisions, if any, are needed to make the act more capable of enforcement?

Question 5.—What provisions are there in the act which may be deemed unreasonable?

Question 6.—What provisions, if any, are there in the act which should be made more stringent?

Question 7.—Is it desirable to have a uniform child labor law in the different States, and if so, why?

Question 8.—What objections are there to having a uniform child labor law in the different States?

Please send answers before June 1, 1910, to AMASA M. EATON, Providence, R. I.

Over one thousand copies of this circular were distributed by mail to persons and organizations throughout the country believed to be interested, including a considerable number believed to be hostile to child labor legislation.

The chairman and secretary of your committee next made a careful examination and analysis of the standard child labor law aforesaid, and prepared a tentative draft of a uniform child labor law. This tentative draft was then submitted to the officers of the National Child Labor Committee and to all the members of your committee.

A little later, a considerable number of very valuable suggestions having been received in response to the circular sent out, a new draft of a uniform law was prepared by the chairman and secretary of your committee.

This draft of a law your committee now submits for your consideration the same being appended hereto. The members of the committee being widely scattered, it has been impossible for any of them, other than the chairman and secretary, since the meeting in Washington to get together for personal conference as to the details of the law. Your committee does not consider that the draft submitted is yet perfect, and each member reserves to himself the right to suggest changes and additions.

The draft appended is accompanied by a preface and notes which it is believed will be of service in considering the act itself.

The whole matter of the employment of child labor is being considered throughout the country in a way and to an extent which we believe is unparalleled.

Besides the National Child Labor Committee, there are numerous State committees and other organizations which are taking an active interest in the matter of the conservation of the children of the country.

During the year efforts were made in Massachusetts and Louisiana to repeal existing laws prohibiting the employment of children in theaters. In each instance the Legislatures, after full discussion, refused to alter the existing laws.

New laws in favor of the child have been passed during the year in Rhode Island, Massachusetts, New York, Ohio, Virginia, Maryland and Kentucky.

It is becoming more and more recognized that the welfare of our children is a matter of national importance, to be zealously safe-guarded. The manufacturers are beginning to

see that it is important that the laws regulating child labor should be uniform in the different States. In the absence of such uniformity one manufacturer can gain an unfair advantage over another.

HOLLIS R. BAILEY, *Chairman.*
AMASA M. EATON.
FREMONT WOOD.
NATHAN WILLIAM MacCHESNEY.
A. T. STOVALL.

AUGUST 1, 1910.

PREFACE TO THE UNIFORM CHILD LABOR LAW.

This law is based upon the so-called standard child labor law, prepared by the National Child Labor Committee. Its provisions for the most part are already in force in a considerable number of States. The theory upon which the law is framed is that it should embody the best features of the laws now in force, and at the same time be fair and reasonable.

In some few instances the law may go beyond what has as yet been enacted, but for the most part the law has already been tested.

The committee has aimed to present a law which any State can adopt without lowering its present standard.

The notes which are interspersed throughout the law will furnish information concerning the history, origin and purpose of some of the sections. These references do not purport to be a complete list.

UNIFORM CHILD LABOR LAW.

Be it enacted, etc., as follows:

CHILDREN UNDER FOURTEEN.

SECTION 1. No child under fourteen years of age shall be employed, permitted or suffered to work in, about or in connection with any —

Mill,
Factory,
Workshop,
Quarry,
Mercantile establishment,
Tenement-house manufactory or workshop,
Store,
Business office,
Telegraph or telephone office,
Restaurant,
Bakery,
Hotel,
Barber shop,
Apartment house,
Bootblack stand or parlor, or in the
Distribution or transmission of merchandise or messages.

This section, with slight modifications, is in force in the following States: —

Delaware, Acts of 1909, chapter 121, section 1 (applies to "any gainful occupation").
District of Columbia, Acts of United States Congress, 1907–08, chapter 209, section 1.
Illinois, Revised Statutes, 1905, chapter 48, section 20.
Louisiana, 1908, Act 301, section 1 ("nor in any other occupation not herein enumerated which may be deemed injurious or unhealthful").
New York Laws of 1909, chapter 36, section 70.
Oklahoma, Child Labor Law, 1908, section 1.*
Pennsylvania, Acts of 1905, Act 226, section 2 ("no child under fourteen years shall be employed in any establishment").

In the Supreme Court of the United States, Feb. 28, 1898, in the case of Holden *v.* Hardy, 169 U. S. 366 (Utah case), the sections of the statute (Laws of 1896, page 219) are upheld, which among other regulations prohibit "the employment of women, and of children under the age of fourteen years, in underground mines."

In the case of Lenahan *v.* Pittston Coal Mining Co., 67 Atl. 642, the Supreme Court of Pennsylvania said: "The Legislature, under its police power, can fix an age limit below which boys should not be employed, etc."

In the case of State *v.* Shorey, 86 Pac. 881, the Supreme Court of Oregon, referring to the inability of the State to interfere with contract in the employment of adult males, said: "But laws regulating the right of minors to contract do not come within this principle. They are not *sui juris*, and can only contract to a limited extent. They are wards of the State and subject to its control. As to them the State stands in the position of *parens patriæ*, and may exercise unlimited supervision and control over their contracts, occupation and conduct, and the liberty and right of those who assume to deal with them. This is a power which inheres in the government for its own preservation, and for the life, person, health and morals of its future citizens, etc."

Section 2. It shall be unlawful for any person, firm or corporation to employ any child under fourteen years of age in *any business or service whatever* during any part of the term during which the public schools of the district in which the child resides are in session.

This section is copied, slightly altered, from the following statutes: —

District of Columbia, Acts of United States Congress, 1907–08, chapter 209, section 1.
Colorado, Laws of 1904, section 417.
Illinois, Revised Statutes, 1905, chapter 48, section 20.
Kansas, Laws of 1909, chapter 65, section 1.
Kentucky, Acts of 1908, chapter 66, section 1.
Massachusetts Acts of 1902, chapter 44, section 1.
Minnesota, General Law, 1907, chapter 299, section 1.
Ohio, Annotated Statutes, 1904, section 4022–2.

CHILDREN UNDER SIXTEEN.

Section 3. No child under the age of sixteen years shall be employed, permitted or suffered to work at any of the following occupations or in any of the following positions: —

Sewing machine belts in any workshop or factory, or assisting therein in any capacity whatever;

Adjusting any belt to any machinery;

Oiling, wiping or cleaning machinery or assisting therein;
Operating or assisting in operating —
Circular or band saws;
Wood shapers;
Wood jointers;
Planers;
Sandpaper or wood-polishing machinery;
Picker machines;
Machines used in picking wool;
Machines used in picking cotton;
Machines used in picking hair;
Machines used in picking any upholstering material;
Paper-lacing machines;
Leather-burnishing machines;
Burnishing machines in any tannery or leather manufactory;
Job or cylinder printing presses operated by power other than foot power;
Emery or polishing wheels used for polishing metal;
Woodturning or boring machinery;
Stamping machines used in sheet-metal and tinware manufacturing;
Stamping machines in washer and nut factories;
Corrugating rolls, such as are used in roofing and washboard factories;
Steam boilers;
Steam machinery; or other
Steam-generating apparatus;
Dough brakes; or
Cracker machinery of any description;
Wire or iron straightening machinery;
Rolling mill machinery, punches or shears;
Washing, grinding or mixing mills;
Calendar rolls in rubber manufacturing;
Laundering machinery.

Sections 3 and 4 are substantially in effect in the following States: —
Illinois, Revised Statutes, 1905, chapter 48, section 20*j*.
Minnesota, General Law, 1907, chapter 299, section 11.
New York, Laws of 1909, chapter 36, section 93.
Oklahoma, Child Labor Law, 1908, section 2.

Section 4. No child under the age of sixteen years shall be employed, permitted or suffered to work in any capacity in, about or in connection with the —

Preparing any composition in which dangerous or poisonous acids are used;

Manufacture of paints, colors or white lead;

Dipping, drying or packing matches;

Manufacturing, packing or storing powder, dynamite, nitro-glycerine compounds, fuses or other explosives;

Manufacture of goods for immoral purposes;

Nor in, about or in connection with any —

Mine;

Coal breaker;

Laundry;

Tobacco warehouse;

Cigar factory; or other

Factory where tobacco is manufactured or prepared;

Distillery;

Brewery, or any other establishment where malt or alcoholic liquors are manufactured, packed, wrapped or bottled;

Hotel;

Theatre;

Concert hall;

Drug store;

Saloon or place of amusement;

Nor in operating any automobile, motor car or truck;

Nor in bowling alleys;

Nor in any other employment declared by the state board of health to be dangerous to lives or limbs, or injurious to the health or morals of children under the age of sixteen.

Cf. Minnesota, General law, 1907, chapter 299, section 11.
Montana, Laws of 1907, chapter 99, section 1.
New York, Laws of 1909, chapter 36, section 93.
Oklahoma, Child Labor Law, 1908, sections 2 and 3.

Section 5. The state board of health may from time to time determine whether or not any particular trade, process of manufacture or occupation, or any particular method of

carrying on such trade, process of manufacture or occupation, is sufficiently dangerous to the lives or limbs or injurious to the health or morals of minors under sixteen years of age employed therein to justify their exclusion therefrom, and may prohibit their employment therein.

Cf. Kentucky, 1906, chapter 52, section 2 (duty of city and county physician, applied to minors under sixteen years).
Massachusetts, Acts of 1902, chapter 106, section 44.
Oklahoma, General Labor Law, 1908, Article V., section 2.

In the case of State *v.* Shorey, 86 Pac. 881, the Supreme Court of Oregon defended the constitutionality of the law regulating the hours for employment of children under sixteen, and said: "It is competent for the State to forbid the employment of children in certain callings, merely because it believes such prohibition for their best interest, although the prohibited employment does not involve a direct danger to morals, decency, or of life or limb."

Section 6. Females under the age of sixteen years shall not be employed, permitted or suffered to work in any capacity where such employment compels them to remain standing constantly. Every person who shall employ any female under the age of sixteen in any place or establishment mentioned in section one shall provide suitable seats, chairs or benches for the use of the females so employed, which shall be so placed as to be accessible to said employees; and shall permit the use of such seats, chairs or benches by them when they are not necessarily engaged in the active duties for which they are employed, and there shall be provided at least one chair to every three females.

Many States require provision of seats for all female employees, *e.g.*: —

California, Code of 1906, Act 1098, section 5.
Colorado, Annotated Statutes, section 3604.
Delaware, Revised Code, 1893, chapter 127, section 1.
District of Columbia, Acts of United States Congress, 1894–95, chapter 192, section 1.
Georgia, Code, 1895, section 127.
Indiana, Statutes of 1901, section 2246.
Iowa, Code, section 4999.
Kansas, Laws of 1901, section 3842.
Kentucky, 1906, chapter 52, section 6 ("girls or adult women").

Louisiana, 1908, Act 301, section 13.
Massachusetts, Acts of 1902, chapter 106, section 41.
Nebraska, Criminal Code, section 6942–*c*.
Ohio, Annotated Statutes, section 4364–69.
Oklahoma, General Labor Law, 1908, Article V., section 17.
Oklahoma, Child Labor Law, 1908, section 3.
Pennsylvania, Digest, 1895, page 902, section 1.

Florida makes same provision relating to all employees. See General Statute, 1906, section 3235.

See also Minnesota, General Law, chapter 299, section 11.
New York, Laws of 1907, chapter 36, sections 93 and 170.

Section 7. No child under sixteen years of age shall be employed, permitted or suffered to work in, about or in connection with any place or establishment named in section one unless the person, firm or corporation employing such child procures and keeps on file, and accessible to any truant officer or inspector of factories, mercantile establishments or mines or other authorized inspector, an employment certificate as hereinafter prescribed; and keeps two complete lists of all such children employed therein, one on file and one conspicuously posted near the principal entrance of the place or establishment in which such children are employed.

This section substantially is in effect in the following States: —
California, Laws of 1906, chapter 1611, section 3.
Indiana, Annotated Statutes of 1901, section 7087*b*.
Massachusetts, Acts of 1902, chapter 106, section 29.
Minnesota, General Law, 1907, chapter 299, sections 2 and 8.
Nebraska, Acts of 1907, chapter 66, section 2.
New York, Laws of 1909, chapter 36, sections 75 and 76.
Oklahoma, General Labor Law, 1908, Article V., section 3.
Oklahoma, Child Labor Law, 1908, section 8.

Sections 7 to 15 follow in part Pennsylvania, Acts of 1905, Act 226, sections 5 and 6.

Note. — Court ruling "The duty of obtaining a certificate devolves absolutely on the employer, and the parents' failure to inform him of the age of child unlawfully employed is no excuse." 71 N. E. Rep. 922.

In the case of American Car & Foundry Co. *v.* Amentraut, 73 N. E. 766, the Supreme Court of Illinois held "that the employer must ascertain, at his peril, that his employees are over fourteen years of age, etc."

Section 8. Inspectors of factories, mercantile establishments or mines, and other authorized inspectors and truant officers, may require that the employment certificates and lists provided for in this act shall be produced for their inspection.

Cf. California, 1906, Act 1828, section 5.
Minnesota, General Law, 1907, chapter 299, section 10.
New York, Laws of 1909, chapter 36, section 76.

Section 9. On termination of the employment of a child whose employment certificate is on file, such certificate shall be forthwith surrendered by the employer to the person who issued the same.

Cf. Minnesota, General Law, 1907, chapter 299, section 2.
Nebraska, Acts of 1907, chapter 66, section 2.
Ohio, Laws of 1910. "The school authority shall not issue age and schooling certificates without the written pledge of the employer to employ the child legally, and also his written agreement to return to the school authority the child's age and schooling certificate within two days from the date of the child's leaving his service, stating the reason for such withdrawal or dismissal."

Section 10. An employment certificate shall be issued only by the superintendent of schools or by a person authorized by him in writing, or, where there is no superintendent of schools, by a person authorized by the school committee: *provided*, that no member of a school committee or other person authorized as aforesaid shall have authority to issue such certificate for any child then in or about to enter such person's own employment or the employment of a firm or corporation of which he is a member, officer or employee.

Sections 10 to 16 are enforced with slight changes in the following States: —

California, 1906, chapter 1611, section 3.
District of Columbia, Acts of United States Congress, 1907–08, chapter 209, sections 2, 3 and 4.
Louisiana, 1908, Act 301, section 2.
Minnesota, General Law, 1907, chapter 299, section 3.
Nebraska, Acts of 1907, chapter 66, sections 3 to 10.

Section 11. The person authorized to issue an employment certificate shall not issue such certificate until he has received, examined, approved and filed the following papers, duly executed : —

(1) The school record of such child properly filled out and signed, as provided in this act.

(2) A passport or duly attested transcript of the certificate of birth or baptism or other religious record, showing the date and place of birth of such child.

(3) The affidavit of the parent or guardian or custodian of a child (which shall be required, however, only in case no one of the above-mentioned proofs is obtainable), showing the place and date of birth of such child. Said affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath without demanding or receiving any fee therefor.

Cf. Iowa, Laws of 1905, chapter 145, section 1.
Massachusetts, Acts of 1902, chapter 106, section 30.
Minnesota, General Law, 1907, chapter 299, section 4.
Nebraska, Acts of 1907, chapter 66, section 3.
New York, Laws of 1909, chapter 36, section 71.

Section 12. A duly attested transcript of the birth certificate, filed according to law with a registrar of vital statistics or other officer charged with the duty of recording births, shall be prima facie evidence of the age of such child for the purposes of this act.

Cf. New York, Laws of 1909, chapter 36, section 71 (*a*).

Section 13. No employment certificate shall be issued until the child in question has personally appeared before and been examined by the officer issuing the certificate, nor until such officer, after making such examination, has signed and filed in his office a statement that the child can read and legibly write simple sentences in the English language, and that in his opinion the child is fourteen years of age or upwards and has reached the normal development of a child of its age, and is in sufficiently sound health and physically able to perform the work which it intends to do, which shall be stated.

In all cases such normal development, sound health and physical fitness shall be determined by a medical officer of the board or department of health or by a physician appointed by the school committee.

Section 13 is substantially in force in many States, *e.g.*: —

Massachusetts, Acts of 1902, chapter 106, section 28 (2).
Minnesota, General Law, 1907, chapter 299, section 4.
New York, Laws of 1909, chapter 36, section 73.
Oklahoma, Child Labor Law, 1908, section 10.

Section 14. Every such employment certificate shall state the name, sex, the date and place of birth of the child, and describe the color of the hair and eyes, the height and weight and any distinguishing facial marks of such child, and that the papers required by the preceding sections have been duly examined, approved and filed, and that the child named in such certificate has appeared before the officer signing the certificate and has been examined.

Every such certificate shall be signed, in the presence of the officer issuing the same, by the child in whose name it is issued. It shall show the date of its issue.

The provisions of sections 14 and 15 are substantially in effect in the following States: —

Minnesota General Law, 1907, chapter 299, section 5.
New York, Laws of 1909, chapter 36, section 72.
Oklahoma, Child Labor Law, 1908, section 10.

Section 15. The school record required by this act shall be signed by the principal or chief executive officer of the school which such child has attended, and shall be furnished on demand to a child entitled thereto.

It shall contain a statement certifying that the child has regularly attended the public schools or schools equivalent thereto or parochial schools for not less than one hundred and sixty days during the year previous to his arriving at the age of fourteen years, or during the year previous to applying for such school record, and is able to read and write simple sentences in the English language, and has received during such period instruction equivalent to five yearly grades in reading, spelling, writing, English grammar and geography, and is familiar with the fundamental operations of arithmetic up to and including fractions.

Such school record shall also give the date of birth and residence of the child as shown on the records of the school and the name of its parent or guardian or custodian.

Cf. Minnesota General Law, 1907, chapter 299, section 6.
New York, Laws of 1909, chapter 36, section 73.
Ohio.
Illinois.

Section 16. The superintendent of schools or other person authorized to issue employment certificates shall transmit between the first and tenth days of each month, to the office of the factory inspector or other authorized inspector, upon blanks to be furnished by him, a list of the names of the children to whom certificates have been issued, and also a list of the names of the children to whom certificates have been refused, together with the ground for refusal. Such lists shall give the name of the prospective employer and the nature of the occupation the child intends to engage in.

Cf. Minnesota, General Law, 1907, chapter 299, section 7.

CHILDREN APPARENTLY UNDER SIXTEEN.

Section 17. The inspector of factories or other authorized inspector or the truant officer shall make demand on any employer in or about whose place or establishment a child apparently under the age of sixteen years is employed, or permitted or suffered to work, and whose employment certificate is not filed as required by this act, that such employer shall either furnish him within ten days satisfactory evidence that such child is in fact over sixteen years of age, or shall cease to employ or permit or suffer such child to work in such factory. The inspector of factories or other authorized inspector or the truant officer shall require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate, and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child.

This section is substantially in force in the following States: —
Minnesota, General Law, 1907, chapter 299, section 2.
Nebraska, Acts of 1907, chapter 66, section 2.
New York, Laws of 1909, chapter 36, sections 76 and 167.
Oklahoma, Child Labor Law, 1908, section 8.

CHILDREN UNDER EIGHTEEN.

Section 18. No child under the age of eighteen years shall be employed, permitted or suffered to work in, about or in connection with —

Blast furnaces;
Docks;
Wharves;
In the outside erection and repair of electric wires;
In the running or management of elevators, lifts or hoisting machines;
In oiling hazardous and dangerous machinery in motion;
At switch tending;
Gate tending;
Track repairing;
As brakeman;
Firemen;
Engineers;
Motormen;
Conductors upon railroads;
Pilots;
Firemen; or
Engineers upon boats or vessels engaged in the transportation of passengers or merchandise;
In or about establishments wherein nitroglycerine —
Dynamite,
Dualin,
Guncotton,
Gunpowder, or
Other high or dangerous explosives are manufactured, compounded or stored;
Nor in any other employment declared by the state board of health to be dangerous to the lives or limbs or injurious to the health or morals of children under the age of eighteen.

With a slightly different list of prohibited employments this section is in force in New York, Laws of 1909, chapter 36, section 93.

Cf. Massachusetts, Acts of 1902, chapter 350, section 1 (elevators).
Michigan, Acts of 1907, Act 169, section 3 (any dangerous employment).

Section 19. The state board of health may from time to time determine whether or not any particular trade, process of manufacture or occupation, or any particular method of carrying on such trade, process of manufacture or occupation, is sufficiently dangerous to the lives or limbs or injurious to the health or morals of minors under eighteen years of age employed therein to justify their exclusion therefrom, and may prohibit their employment therein.

The employment of a minor in violation of this statute is negligence, and the employee does not assume the risk of injury. 105 N. W. Rep. 755.

Nor does the fellow-servant doctrine apply to one whose employment the law forbids. 116 N. W. Rep. 1107.

But he may be charged with contributory negligence. 112 N. W. Rep. 691.

Cf. Massachusetts Acts of 1902, chapter 106, section 44.
Michigan, Acts of 1907, Act 169, section 3.

Section 20. No female under the age of eighteen years shall be employed, permitted or suffered to work in or about any mine, quarry or coal breaker.

Note. — All states with mining laws prohibit employment of all females. Minors are here specified, as all reference to regulation of adult labor is avoided in this draft.

HOURS OF LABOR.

Section 21. In cities of the first or second class no person under the age of twenty-one years shall be employed or permitted to work as a messenger for a telegraph or messenger company in the distribution, transmission or delivery of goods or messages before five o'clock in the morning or after ten o'clock in the evening of any day.

See New York, Laws of 1910, chapter 342, section 161*a*.

A law regulating the hours of labor and fixing the maximum of ten hours a day for women in laundries was held constitutional in 1908 by the Supreme Court of the United States in the case of Muller *v.* Oregon, 208 U. S. 412.

In the case of Broad *v.* Woydt, 78 Pac. 1004, the Supreme Court of Washington decided that a city ordinance making 8 hours a day's work on any work of municipal construction, etc., is not repugnant to the 14th amendment of the Constitution of the United States.

SECTION 22. No boy under the age of sixteen years and no girl under the age of eighteen years shall be employed, permitted or suffered to work at any gainful occupation other than domestic service or work on a farm more than forty-eight hours in any one week, nor more than eight hours in any one day; or before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening. The presence of a child in any establishment during working hours shall be prima facie evidence of its employment therein.

This section, prohibiting night work and limiting to an eight-hour day for children under sixteen, applies with slight variations in the following States:—

Colorado, Laws of 1904, section 1801*e*2.

District of Columbia, Acts of the United States Congress, 1907-08, chapter 209, section 8.

Illinois, Revised Statutes of 1905. chapter 48, section 20*i*.

Kansas, Acts of 1909, chapter 65, section 2 (hours 7 A.M. to 6 P.M.).

Kentucky, 1906, chapter 52, section 1 (sixteen years for both sexes; hours forbidden, 7 P.M. to 6 A.M.).

Louisiana, 1908, Act 301, section 9, "Presence of child prima facie evidence."

Massachusetts, Revised Laws of 1902, chapter 106, sections 27, 28 (prohibits night work for children under fourteen in all occupations and for minors under eighteen and all women in textile factories).

Michigan, 1901, Act 113, Section 2 (age, sixteen years; hours, 6 P.M. to 7 A.M.).

New York, Laws of 1909, chapter 36, section 77 (1) (age sixteen for both sexes; hours of work limited between 8 A.M. and 5 P.M.).

Ohio, Acts of 1904, page 321, section 6986-8.

The constitutionality of the law regulating hours of employment of women and children has been recognized since its establishment by the Supreme Court of Massachusetts in 1876 (120 Mass. 385). So well established was this principal that although many cases have been tried under a similar law in New York, no case has been carried to the Court of Appeals in New York.

The regulation of hours for the employment of women has been involved in many cases. In 1895 the Supreme Court of Illinois, Ritchie *v.* The people, 55 Ill. 98, declared the law unconstitutional in its application to women as "a purely arbitrary restriction upon the fundamental rights of citizens to control their own time, and

substitute the judgment of the Legislature for the judgment of the employer and employee in matters about which they are competent to agree with each other." But this decision did not affect the validity of the law in relation to the employment of minors. The words "competent to agree with each other" are significant.

The case of Low *v.* Printing Co., 59 N. W. 362, decided by the Supreme Court of Nebraska in 1894, made clear that the objection to the law was that it aimed to prevent "persons legally competent to enter into contracts, etc." The fact seems clearly recognized that a minor child is not such a person. The Illinois court decision, above referred to, concluded by saying: "We do not wish to be understood by anything herein said as holding that section 5 would be invalid if it was limited in its terms to females who are minors."

The Supreme Court of California, in holding void an ordinance of the city of Los Angeles which would regulate the hours of labor on all contracts, says: "If the service to be performed were . . . against public policy . . . or such as might be unfit for certain persons, for example, females or infants, the ordinance might be upheld, etc."

Wenham *v.* State, 5 Neb. 394.
State *v.* Buchanan, 29 Wash. 603.

In the case of Cantwell *et al. v.* State of Mo., 179 Mo. 245, the Supreme Court of Missouri held that the Missouri 8-hour law for minors was valid, and its decision was affirmed by the Supreme Court of the United States on authority of 169 U. S. 366; 197 U. S 11; 3 Pet. 280, and 179 Mo. 245.

Held constitutional. Commonwealth *v.* Hamilton Mfg. Co., 120 Mass. 383.

Pennsylvania law limiting hours of labor for adult females is constitutional. State *v.* Beatty, 15 Superior Court, 5.

Section 23. Every employer shall post in a conspicuous place in every room where any boy under the age of sixteen years or any girl under the age of eighteen years is employed, permitted or suffered to work, a printed notice stating the hours required of them each day of the week, the hours of commencing and stopping work, and the hours when the time or times allowed for dinner or for other meals begin and end. The printed form of such notice shall be furnished by the inspector of factories or other authorized inspector, and the employment of any minor for a longer time in any day so stated or at any time other than as stated in said printed notice shall be deemed a violation of the provisions of this act.

Applying to minors under eighteen years, in force in: —

California, Laws of 1906, Act 1611, section 3.
Connecticut, Laws of 1909, chapter 220, section 1.
Kentucky, 1906, chapter 52, section 1 (applies to minors under sixteen years).
Massachusetts, Acts of 1902, chapter 106, section 23 (applies to minors under eighteen years and all women).

Court Ruling No. 120 Massachusetts, 383.

STREET TRADES.

Section 24. No male child under ten and no girl under sixteen years of age shall, in any city of the first or second class, sell or expose or offer for sale newspapers, magazines, periodicals or other merchandise in any street or public place. No child shall work as a bootblack in any street or public place unless he is over ten years of age.

Sections 24 to 29. The employment of children in street trades has not received the attention it deserves in this country. Many States are at present without any provisions for its regulation. The most advanced steps have been taken in New York, Massachusetts, Oklahoma, Wisconsin, in the District of Columbia and in Cincinnati, O.

District of Columbia, Acts of United States Congress, 1907-08, chapter 209, section 11.
New York, Acts of 1907, chapter 588, section 174.
Oklahoma, Child Labor Law, 1908, section 4.
Wisconsin, Acts of 1909, section 1728, (*p*), (*q*) and (*r*).

See also Ordinances of City Council, Cincinnati, O., 1909.

Section 25. No male child under fourteen years of age shall sell or expose or offer for sale in any street or public place any of the articles mentioned in section twenty-four, or work as a bootblack therein, unless a permit and badge as hereinafter provided shall have been issued to him by the superintendent of schools or by a person authorized by him in writing, or, where there is no superintendent of schools, by a person authorized by the school committee, on the application of the parent, guardian or other person having the custody of the child desiring such permit and badge, or in case said child has no parent, guardian or custodian, then

on the application of his next friend, being an adult. Such permit and badge shall not be issued until the officer issuing the same shall have received, examined, approved and placed on file in his office satisfactory proof that such male child is of the age of ten years or upwards, and shall also have received, examined and placed on file the written statement of the principal or chief executive officer of the school which the child is attending, stating that such child is an attendant at such school, that he is of the normal development of a child of his age and physically fit for such employment, and that said principal or chief executive officer approves the granting of a permit and badge to such child. No such permit or badge shall be valid for any purpose except during the period in which such proof and written statement shall remain on file, nor shall such permit or badge be authority beyond the period fixed therein for its duration. After having received, examined and placed on file such papers the officer shall issue to the child a permit and badge. Principals or chief executive officers of schools in which children under fourteen years of age are pupils shall keep complete lists of all children in their schools to whom a permit and badge as herein provided have been granted.

Cf. District of Columbia, Acts of the United States Congress, chapter 209, sections 12, 13 and 14 (applies to children under sixteen).
Massachusetts, Acts of 1902, chapter 65, section 67.
New York, Acts of 1907, chapter 588, section 175.
Wisconsin, Acts of 1909, section 1728 (*s*) and (*t*).

Section 26. Such permit shall state the date and place of birth of the child, the name and address of its parent, guardian, custodian or next friend, as the case may be, and shall describe the color of hair and eyes, the height and weight, and any distinguishing facial mark of such child, and shall further state that the papers required by the preceding section have been duly examined and filed, and that the child named in such permit has appeared before the officer issuing the permit. The badge furnished by the officer issuing the permit shall bear on its face a number corresponding

to the number of the permit, and the name of the child. Every such permit, and every such badge on its reverse side, shall be signed in the presence of the officer issuing the same by the child in whose name it is issued.

Cf. New York, Acts of 1907, chapter 588, section 176.
Wisconsin, Acts of 1907, section 1728*u*.

SECTION 27. The badge provided for herein shall be worn conspicuously at all times by such child while so working; and all such permits and badges shall expire annually on the first day of January. The color of the badge shall be changed each year. No child to whom such permit and badge are issued shall transfer the same to any other person nor be engaged in any city of the first or second class as a newsboy or bootblack, or shall sell or expose or offer for sale newspapers, magazines, periodicals or other merchandise in any street or public place without having conspicuously upon his person such badge, and he shall exhibit the same upon demand at any time to any police or truant officer.

Cf. New York, Acts of 1907, chapter 588, section 177.
Wisconsin, Acts of 1909, section 1728*v*.

SECTION 28. No child to whom a permit and badge are issued as provided for in sections twenty-four, twenty-five, twenty-six and twenty-seven of this act shall work as a bootblack, sell or expose or offer for sale any newspapers, magazines, periodicals or other merchandise in any street or public place after eight o'clock in the evening or before six o'clock in the morning.

Cf. New York, Acts of 1907, chapter 588, section 178 (prohibited hours, 10 P.M. to 6 A.M.).
Wisconsin, Acts of 1909, section 1728*w* (prohibited hours for newsboys, 10 P.M. to 6 A.M.; for bootblacks and other street trades, 7 P.M. to 7 A.M.).

SECTION 29. Any child who shall work in any city of the first or second class in any street or public place as a bootblack or newsboy, or who shall sell or expose or offer for sale newspapers, magazines, periodicals or other merchandise, in

violation of the provisions of this act, shall be arrested and brought before the juvenile court or a court or magistrate having jurisdiction to commit a child to an incorporated charitable reformatory or other institution, to be dealt with according to law. The permit and badge of any child who violates the provisions of this article may be revoked by the officer issuing the same, upon the recommendation of the principal or chief executive officer of the school which such child is attending, or upon the complaint of any police officer or truant officer, and such child shall surrender the permit and badge so revoked upon the demand of any truant officer or police officer charged with the duty of enforcing the provisions of this article. The refusal of any child to surrender such permit and badge, upon such demand, or the working as a bootblack, or the sale or offering for sale of newspapers, magazines, periodicals or other merchandise in any street or public place by any child after notice of the revocation of such permit and badge, shall be deemed a violation of this article and shall subject the child to the penalties provided for in this act.

Cf. Massachusetts, Acts of 1906, chapter 151, section 18.
New York, Acts of 1907, chapter 588, sections 179 and 179*a*.
Ohio, Annotated Statutes, section 4022–5.

GENERAL PROVISIONS.

Section 30. Inspectors of factories and other authorized inspectors and truant officers may visit any place of employment mentioned in either section one, three, four, eighteen, twenty or twenty-two, and ascertain whether any minors are employed therein contrary to the provisions of this act; and they shall report any cases of such illegal employment to the school authorities; and truant officers shall also report the same to the inspector of factories or other authorized inspector.

It shall be the duty of factory and other duly authorized inspectors to make complaints for offenses under this act and prosecute the same.

This shall not be construed as a limitation upon the right of other persons to make and prosecute such complaints.

This section, adapted to the enforcing agencies in various States, is substantially in force in: —

District of Columbia, Acts of United States Congress, 1907–08, chapter 209, section 7.
Illinois, Revised Statutes, 1905, chapter 48, section 20*l*.
Kansas, Acts of 1905, chapter 278, section 3.
Massachusetts, Acts of 1906, chapter 499, section 2.
Minnesota, General Law, 1907, chapter 299, section 10.
Ohio, Annotated Statutes, section 4022–5.

In the case of State *v.* Vickens, 84 S. W. 908, the Supreme Court of Missouri held that the law authorizing the appointment of factory inspectors is a valid exercise of the police power of the State.

PENALTIES.

Section 31. Whoever employs any child, and whoever having under his control as parent, guardian or otherwise, any child, permits or suffers such child to be employed or to work in violation of any of the provisions of this act, shall for such offense be fined not less than five nor more than two hundred dollars, or be imprisoned for not less than ten days nor more than thirty days, or both, in the discretion of the court.

Sections 31 to 41 are slightly altered from laws in force in the following States: —

California, Laws of 1906, chapter 1611, sections 3 and 4.
Illinois, Revised Statutes of 1905, chapter 48, section 20*m*.
Iowa, Acts of 1906, chapter 103, section 6.
Kansas, Acts of 1905, chapter 278, section 4.
Louisiana, 1908, Act 301, section 7.
Massachusetts, Acts of 1906, chapter 499, section 1.
Minnesota, General Law of 1907, chapter 299, section 9 (provides fines, but not imprisonment).
Ohio, Acts of 1904, page 321, section 6989–9.

Sections 31 to 41. Compare New York penal law, Article 120, Laws of 1909, chapter 88, section 1275.

It has been the policy of those drafting this uniform law to make the minimum penalty small, with a view to a more rigid enforcement of the various penalty sections. In nearly every State having well-established departments of factory inspection the penalties are heavier, both as to fines and imprisonments. In some instances it has been observed that the heavy minimum penalty tended to thwart the purpose of the law by causing courts or juries to fail to convict.

Section 32. Whoever continues to employ any child in violation of any of the provisions of this act, after being notified thereof by a truant officer or an inspector of factories or other authorized inspector, shall for every day thereafter that such employment continues be fined not less than five nor more than twenty dollars.

Cf. Massachusetts, Acts of 1906, chapter 499, section 1.

Section 33. Any person, firm or corporation retaining an employment certificate in violation of section nine of this act shall be fined not less than five dollars nor more than fifty dollars.

Cf. Massachusetts, Acts of 1906, chapter 499, section 4.

Section 34. Any person authorized to sign any certificate, affidavit or paper called for by this act, who knowingly certifies to any materially false statement therein, shall be fined not less than five dollars nor more than one hundred dollars.

Section 35. A failure by an employer to produce to a truant or factory officer or authorized inspector any employment certificate or list required by this act shall be prima facie evidence of the illegal employment of any child whose employment certificate is not produced or whose name is not so listed.

Cf. New York, Laws of 1909, chapter 36, section 167.
Cf. also Indiana, Annotated Statutes, 1901, section 7770 (general penalty clause).
Louisiana, 1908, Act 301, section 11.
Massachusetts, Acts of 1906, chapter 499, section 4.

Section 36. In case any employer shall fail to produce and deliver to a factory inspector or other authorized inspector or truant officer, within ten days after demand made pursuant to section seventeen of this act, the evidence of age therein required, and shall thereafter continue to employ such child or permit or suffer such child to work in such place or establishment, proof of the giving of such notice

and of such failure to produce and file such evidence shall be prima facie evidence of the illegal employment of such child in any prosecution brought therefor.

Cf. New York, Laws of 1909, chapter 36, section 177.

Section 37. Any child working in or in connection with any of the establishments or places or in any of the occupations mentioned in either section one, three, four, eighteen, twenty or twenty-two, who refuses to give to the factory inspector or other authorized inspector or the truant officer his or her name, age and place of residence, shall be forthwith conducted by the inspector or truant officer before the judge of the juvenile or probate court, or other proper municipal or police authority, for examination and to be dealt with according to law.

Section 38. Any employer who fails to post the printed notice required by section twenty-three of this act in the manner therein specified shall be fined not less than five nor more than fifty dollars.

Section 39. Any superintendent of schools or other person issuing employment certificates who fails to comply with the provisions of this act shall be fined not less than five dollars nor more than twenty-five dollars.

Section 40. Every employer who fails to provide suitable seats, chairs or benches, as provided in section six of this act, shall be fined not less than ten dollars nor more than fifty dollars.

Section 41. Every employer who fails to procure and keep or file employment certificates or who fails to keep and post lists, as provided in section seven of this act, shall be fined not less than ten dollars nor more than fifty dollars.

UNIFORM WILLS ACT.

AN ACT RELATIVE TO WILLS EXECUTED WITHOUT THIS STATE, AND TO PROMOTE UNIFORMITY AMONG THE STATES IN THAT RESPECT.[1]

SECTION 1. *Be it enacted, etc.*, That a last will and testament, executed without this state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state: *provided*, said last will and testament is in writing and subscribed by the testator.

[1] In final form approved by the Conference, August, 1910.

UNIFORM DESERTION ACT.

AN ACT RELATIVE TO DESERTION AND NON-SUPPORT OF WIFE BY HUSBAND, OR OF CHILDREN BY EITHER FATHER OR MOTHER, AND PROVIDING PUNISHMENT THEREFOR; AND TO PROMOTE UNIFORMITY BETWEEN THE STATES IN REFERENCE THERETO.[1]

SECTION I. *Be it enacted, etc.*, (1)

That any husband who shall, without just cause, desert or wilfully neglect or refuse to provide for the support and maintenance of his wife in destitute or necessitous circumstances; or any parent who shall, without lawful excuse, (2) desert or wilfully neglect or refuse to provide for the support and maintenance of his or her (3) child or children under the age of 16 years in destitute or necessitous circumstances, shall be guilty of a crime (4) and, on conviction thereof, shall be punished by fine not exceeding five hundred dollars, or imprisonment in the _____ (5), not exceeding two years, (6) or both, with or without hard labor, in the discretion of the Court. (7)

1. This Act, throughout, follows very closely the Act of Congress of March 23rd, 1906, for the District of Columbia, the principles of which are very fully discussed in the monograph of William H. Baldwin, Esq., of the Board of Managers of the Associated Charities of Washington, D. C., entitled "Family Desertion and Non-Support Laws." Nearly every State has some provision relating to this subject. The Acts of Assembly in many States are quite full and comprehensive. The Act adopted by Congress for the District of Columbia was the result of correspondence by the Board of Associated Charities of Washington, with Governors, Attorneys-General, District Attorneys, and prominent lawyers of many States. This Act of Congress works very satisfactorily in the District of Columbia. At the meeting of the Committee in Wash-

[1] Prepared under the direction of and recommended by the Commissioners on Uniform State Laws in National Conference.

ington in January, 1910, Mr. Baldwin was present, and greatly assisted the Committee with advice and suggestions and information as to the practical workings of the Act in the District of Columbia.

Acts of Congress differ very much from Acts of Assembly of the various States, in that they are much more concise, and generally embrace, by way of proviso, matters that the legislatures of the various States are inclined to express in separate sections. Each mode of expression has its advantages. But, in view of the fact that the courts of each separate State are so often called upon to determine the constitutionality of various parts of Acts of Assemby, and since one part of an Act may be sustained as constitutional, and another part rejected as unconstitutional, it seems preferable for State legislatures to divide every Act into separate and distinct sections. Therefore, the provisions of Section I of the District of Columbia Act have been divided into several sections.

2. It will be observed that in line 1, "wife desertion" must be "without just cause," whereas in line 5 "child desertion must be "without lawful excuse." The reason for the distinction is this: Wife desertion is a cause of divorce as well, and in divorce proceedings such desertion must have been "without just cause" on the part of the *deserted* wife. But in the case of child desertion there must be a "lawful excuse" on the part of the *deserting* parent. In other words, in the first instance the ground justifying the desertion must be furnished or occasioned by the deserted party. In the second instance the excuse or ground for desertion must be furnished by the deserting party.

3. The draft of this Bill as reported to the Conference at Chattanooga included illegitimate as well as legitimate children, largely upon the strong recommendation of Mr. W. H. Baldwin, of Washington, D. C. The District of Columbia Act does not include illegitimate children, but a bill was introduced at the last session of Congress, to bring them within its provisions, and received the approval of the Judiciary Committee of both Houses. Nebraska and Ohio, however, seem to be the only States whose Desertion Laws apply to illegitimate as well as legitimate children. While there are strong moral and legal grounds for so doing, yet inasmuch as the Bastardy Laws of every State make some provision for the support of illegitimate children, it was deemed advisable by the Conference not to combine Family Desertion with the desertion of a "*nullius filius*," since the proper remedy would be by amendment of the Bastardy Laws.

4. "Family Desertion," according to the tables prepared by Mr. Baldwin, is made a felony in six States, viz., Indiana, Michigan, Nebraska, New York, Ohio, and Wisconsin; a misdemeanor in thirty-eight States, including the District of Columbia: while in five States there is no law on the subject — to wit, in Iowa, Nevada, Oregon, Tennessee and Texas. Some States, like Pennsylvania, treat Family Desertion in two ways, either as a quasi-criminal offense as under the Act

of April 13, 1867, P. L. 78, where the offender is haled before the court of Quarter Sessions on information made before a Justice of the Peace or other Magistrate, and after hearing, without a jury, the Court may order him to pay a certain sum for the support and maintenance of his wife or children; or as a misdemeanor, as under the Act of March 13, 1903, P. L. 26. Under this latter Act, which is cumulative, the offender is entitled to trial by jury. The penalty is imprisonment or fine, or both; the fine if any, to be paid or applied in whole or in part to the wife or children, as the court may direct. In Pennsylvania a civil remedy is also granted to the wife against the husband by the Act of April 27, 1909, P. L. 182. Such civil remedy obtains in many other States.

As pointed out by Mr. Baldwin in his study on "Family Desertion and Non-Support," it is very essential that the offense of desertion and non-support be raised to the grade of a crime, in order that it may become an extraditable offense, as many instances occur where the husband removes to another State, leaving his family helpless and destitute. But as thirty-eight States and Territories have made it a misdemeanor, and since under the Act of Congress of February 12th, 1793, any person charged with the commission of a felony *or other crime*, is subject to extradition, the conference substituted the word "crime" for "misdemeanor." In one State at least, South Carolina, and probably others, a misdemeanor is not punishable by confinement at hard labor.

5. Here will be inserted the place of imprisonment.

6. Unless there is a constitutional provision in any state limiting the term of imprisonment for a misdemeanor to one year or less, this clause "not exceeding two years" is clearly within the power of the Legislature. The committee, when at Washington, adopted by way of amendment to Section IV of the printed report, now Section IV, the words "for a period not exceeding two years," but omitted to make a similar amendment to Section I. This clause therefore is added that Sections I and IV may correspond. While "twelve months" is the maximum term of imprisonment fixed by the District of Columbia Act, it has been found in practice that it often becomes necessary to begin proceedings *de novo* at the end of the first year. It was therefore thought best to increase the time to two years.

7. As stated above in Note 4, confinement at hard labor is never imposed in some States where the offense is only a misdemeanor. In other States the penalty "at hard labor" is not imposed except where the imprisonment is in the Penitentiary, or a Reformatory, or House of Correction. It rarely obtains where the imprisonment is in the County Jail; partly for the practical reason that in them there are neither appliances nor space nor opportunities for what is known as "convict labor." But as the penalty provided in this Section reads, "with or without hard labor," the question will rest in the discretion of the court

according to the penal provisions of the laws of each State. In some States "convict labor" has been either abolished or limited as the result of the influence of the Labor Unions.

In Maryland, at the Baltimore Penitentiary, "Contract Labor" is permitted by law. Recent investigations show that the labor of the prisoners enures not only to the benefit of the State, but of the prisoners themselves, who by working overtime earn for themselves or for the support of their families fully as much as goes to the State. In the District of Columbia, which is under control of Congress, and therefore in a sense, *sui generis*, prisoners at hard labor may be compelled to work upon the streets of the City of Washington at a fixed wage per diem, and of their wages, under the Act of Congress of 1906, an amount equal to fifty cents a day is paid over to, or for the benefit of, the prisoner's family. It would be impracticable, perhaps, to insert a clause in this Bill providing for the employment of offenders under this Act upon the streets or highways of the several municipalities or counties of each State under the term "at hard labor." Nevertheless, it is evident that if such provision could be adopted by each State, it would relieve the public at large from the expense of supporting the families of such offenders. Such a provision is well worth the consideration of every State.

SECTION II. Proceedings under this Act may be instituted upon complaint made under oath or affirmation by the wife or child or children, or by any other person, against any person guilty of either of the above named offenses. (1)

1. The initial proceedings in all desertion cases should be instituted before the court of lowest jurisdiction. In some States this is a Justice of the Peace, in others a Municipal Court, in others a County or District Court. The point to be borne in mind in this regard is that the remedy be as simple and speedy as possible.

SECTION III. At any time before the trial, upon petition of the complainant and upon notice to the defendant, the Court, or a Judge thereof in vacation, may enter such temporary order as may seem just, providing for support of the deserted wife or children, or both, *pendente lite*, and may punish for violation of such order as for contempt. (1)

1. This Section is in form the same as an amendment to Section IV of the printed Bill offered at Detroit by Mr. Noel, of Indiana. The purpose of the Section is plain; namely to provide for support for the family pending the beginning of the proceedings and the final order of the court. Where the proceedings are begun before a court of record,

the application, of course, can be made at any time. Where the proceedings are begun before a Justice of the Peace or other Magistrate, who must make his return to the court, it follows that the application under this Section cannot be made until such return has been filed with the Clerk of the Court. But that is a minor matter of procedure.

SECTION IV. Before the trial, with the consent of the defendant, or at the trial, on entry of a plea of guilty, or after conviction, instead of imposing the penalty hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances, and to the financial ability or earning capacity of the defendant, shall have the power to make an order, which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding two years, (1) to the wife or to the guardian, curator or custodian of the said minor child or children, or to an organization or individual approved by the court as trustee; (2) and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a Judge thereof in vacation, may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise of full force and effect. (3)

1. The term of one year in Section IV of the Bill as printed was changed by the committee at Washington to read "not exceeding two years," for reasons stated in Note 6 to Section 1.

2. Section I makes the offense of Desertion a crime, and prescribes the penalty; Section III secures support for the family by an order *pendente lite;* but as the main purpose of a Desertion Act is the protection and maintenance of the family, it is apparent that additional remedies are required. This Section endeavors to meet that need: *a.* By an order of support entered before trial with the consent of the defendant; *b.* By an order of support made if a plea of guilty be entered to the indictment; *c.* By an order of support made after conviction. All of these orders to be in lieu of, or in addition to the penalties prescribed by Section I.

3. This clause providing for release on probation is taken from the District of Columbia Act. The Desertion Acts of many States contain a similar provision which is found in practice to be very effective. The penalty of imprisonment, especially at hard labor, soon brings the wife deserter to a willingness to give surety for the support of his family, and a means is thus secured for enforcing the order of support authorized by the first paragraph of this Section.

Section V. If the court be satisfied by information and due proof under oath, that at any time during said period of two years the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence, as the case may be. In case of forfeiture of recognizance, and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid, in whole or in part, to the wife, or to the guardian, curator, custodian or trustee of the said minor child or children. (1)

1. This provision is taken from the District of Columbia Act which follows the Acts of Illinois, Louisiana and Virginia.

Section VI. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such facts in a civil action. (1) In no prosecution under this act shall any existing statute or rule (2) of law prohibiting the disclosure of confidential communications between husband and wife apply, (3) and both husband and wife shall be competent (4) witnesses to testify against each other (5) to any and all relevant matters, including the fact of such marriage and the parentage of such child or children; (6) Provided that neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be *prima facie* evidence that such desertion, neglect or refusal is wilful. (7)

1. While under the Constitution of the United States, and probably of each State, no defendant can be compelled to incriminate himself, yet both in criminal and civil actions the issue of legitimacy or illegitimacy of children is a matter of frequent occurrence. This clause relating to a proceeding where a wife or husband, necessarily by the fault of the other, is forced to protect life or reputation, as a stranger would, permits the character of the proof to be such as would be required in a civil action — *i.e.*, preponderance of proof may control.

2. Section VI *as formerly printed* refers simply to "existing provisions of law." But as "existing provisions of law might be construed as including only statutory provisions and as not being broad enough to include judicial utterances upon *The Rule of Law* relating to confidential communications, the phrase is therefore changed to read "Existing Statute or Rule of Law."

3. This clause relating to disclosure of confidential communications between husband and wife opens a field for wide discussion. Under the Common Law the fiction of unity of husband and wife, and the farther fiction forbidding parties in interest to testify either for or against each other long obtained. The latter fiction has been abolished in most States. The former fiction has been abolished in many States, both in criminal and civil proceedings where —

(*a*) The consent of the other party is given at the trial; or (*b*) Where the marital relation has been so violated by the act of either as to abolish the reason for the rule. The Constitution of the United States provides that "no person can be compelled in any criminal case to be a witness against himself." The Constitutions of many States provide that no person can be compelled in any criminal case "to give evidence against himself." But these constitutional provisions do not apply to or limit the power of the State Legislature to require the disclosure of confidential communications between husband and wife. The forbidding of such disclosures was the policy of the law; but if the confidential marital relation has been violated by the act of either party, the reason of the rule ceases. In such case the communications do not arise from the confidence of the parties in each other, but from the want thereof; and therefore even without statutory authority either party may testify to the same. Seitz vs. Seitz, 170 Pa., page 171.

4. An exception to the rule excluding testimony of husband and wife against each other is to be found in cases of personal outrage by one on the other.

30 Amer. and Eng. Cyc., page 954.

This exception being based on public policy it follows that the injured spouse is not only competent but is compellable to testify if unwilling.

30 Amer. and Eng, Cyc., page 955; Johnson vs. State, 94 Ala., page 53; Turner vs. State, 60 Miss., page 351; S. C., 45 Amer. Rep., page 412; Bramlette vs. State, 21 Tex. App., page 611; see also

"Cyc.," pp. 961-2, (2) — (b); 46 Amer. Rep., page 241. In Pennsylvania, by the Act of May 23, 1887, P. L. 158, Section 2, it is provided that in criminal cases neither husband nor wife shall be competent to testify against each other "except in proceeding for desertion and maintenance, and in any criminal proceeding against either for bodily injury or violence attempted, done or threatened upon the other; and also that neither shall "be competent or permitted to testify to confidential communications made by one to the other, unless this privilege be waived upon the trial." A similar provision will be found in the statutes of many States. It is therefore apparent that it lies in the power of the Legislatures of each State to abrogate the Common Law rule forbidding husband or wife to testify against each other (whether in criminal or civil proceedings), and forbidding the disclosure of confidential communications. No constitutional prohibition is violated thereby.

5. In Section VI of the Detroit report the clause read, "testify to any and all relevant matters." At the meeting at Detroit in August, 1909, the words "against each other" were inserted after the word "testify." The reasons for such amendment have been given in Notes (3) and (4) supra.

6. Since, as explained in Note 1, the first paragraph of this Section limits the proof of the parentage of children to the character of proof required in civil actions, it would seem that this last clause relating to "the fact of marriage and the parentage of any child or children," cannot be construed to compel either parent to incriminate himself or herself, but to avoid all doubt upon this point it has been thought wiser to add the proviso.

7. Section VI of the Detroit Bill, included only the words "desertion" and "neglect," whereas Section I included the words "desert, neglect or refuse." The words "desert, neglect or refuse," are well established and generally adopted in statutes of this character; therefore, the same terminology as obtains in Section I has been adopted.

Section VII. It shall be the duty of the sheriff, warden, or other official in charge of the County Jail, or of the custodian (1) of the Reformatory, Workhouse, or House of Correction, in which any person is confined on account of a sentence at hard labor under this Act, to pay over to the wife, or to the guardian, curator or custodian of his or her minor child or children, or to an organization or individual approved by the court as trustee, at the end of each week, for the support of such wife, child or children, a sum equal to _____ for each day's hard labor performed by said person so confined. (2)

1. The term "custodian" is generic. In each State the proper title of the official in charge of the Reformatory, Workhouse, or House of Correction should, perhaps, be substituted.

2. This Section is copied from Section III of the District of Columbia Act with one or two verbal changes.

In order to carry out the provisions of this Section there must, of course, be additional legislation in each State specifically providing for "contract" or "convict" labor. And a fund provided, from which to draw for the purposes covered by this Section. As stated before, the District of Columbia is *sui generis* in this regard. Congress makes an annual appropriation to this end. In the District of Columbia, desertion offenders are put at "hard labor" upon the streets under "contract labor." The method there in vogue of treating desertion offenders is worthy of study and imitation by every State.

SECTION VIII. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

1. This Section was not adopted by the Conference at the Chattanooga meeting, but as the title was amended by adding the clause "And to promote uniformity between the States in reference thereto," it of course becomes necessary to insert the language of this Section in this Act as in all other uniform Acts.

SECTION IX. Repealing clause.

SECTION X. This Act shall take effect the _____ day of _____, Anno Domini 19____

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